IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.450 OF 2006
WITH
CIVIL APPLICATION NO.551 OF 2006

Jaydev S. Bhatt & Anr. ... Appellants

Vs.

Atul V. Kantharia & Ors. ... Respondents

Mr. V.P. Vashi i/b M/s. M.P. Vashi & Associates for the appellants.

Mr. Shailesh Thakkar for respondent No.1.

Mr. Pankaj S. Shah for respondent No.3.

CORAM : A.M. KHANWILKAR, J.

DATED : 10TH JULY, 2006.

P.C.:-

Heard counsel for the parties.

Admit. As a short question is involved in this appeal, by consent of the parties, the appeal is taken up for hearing forthwith.

This appeal from order takes exception to the judgment and order dated 8/6/2006 passed by the City Civil Court at Bombay, which in turn, has dismissed the Notice of Motion taken out by the appellants. Two reliefs were claimed by this Notice of Motion, which read thus:

> "(a) That pending the hearing and final disposal of the suit, the defendants, their family members, servants, agents, contractors and hirelings may be prevented by a temporary injunction of this Hon'ble Court from disturbing the possession of the plaintiffs in respect of residential Flat No.21 on the 4th floor, Krishna Co-op. Hsg. Society Ltd., Krishna Apartments, 212/6, C.D. Barfiwala Marg, Mumbai – 58, without due process of law.
>
> (b) That pending the hearing and final disposal fo the suit, the 3rd defendants, their directors, servants and agents be prevented by a temporary order and injunction of this Hon'ble Court from making the allotment of the falt in the new building under construction in lieu of the suit flat viz. Flat No.21, 4th floor, Krishna Co-op. Hsg. Society Ltd., 212/6, C.D. Barfiwala Marg, Mumbai - 58, occupied by the plaintiffs."

Insofar as the second relief in prayer clause (b) is concerned, it is noticed that there is no substantive relief claimed in that behalf in the suit as filed. It is not possible to countenance the grievance of the appellants with regard to rejection of relief in terms of prayer clause (b) of the Notice of Motion. It is not necessary for me to go into the issues on which the trial court has rejected the said relief.

Insofar as relief in prayer clause (a) is concerned, in substance, the appellants prayed that during the pendency of the suit, the defendants shall not cause dispossession of the appellant from the suit premises without due process of law. Counsel appearing for the respective defendants make statements across the bar on instructions from their clients, that the

concerned defendants have no intention to forcibly dispossess the appellants/plaintiffs. This statement will have to be accepted. In view of this statement, nothing survives for consideration insofar as prayer clause (a) of the Notice of Motion is concerned.

Counsel for the appellants submits that the appellants be permitted to amend the plaint and ask for appropriate reliefs so as to pursue interim relief in terms of prayer clause (b) of the Notice of Motion. Needless to observe that if the appellants makes such an application as may be advised, before the trial court, that application will be considered on its own merit in accordance with law. All questions in that behalf are kept open.

Appeal from order as well as the civil application are disposed of in the above terms. No order as to costs.

[A.M. KHANWILKAR, J.]